IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.802 of 2006

Elumalai .. Petitioner

Vs.

1. The Secretary to Government,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The District Magistrate and
   District Collector,
   Kancheepuram District,
   Kancheepuram. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 27.07.2006 in BDFGISV No.30/2006 against the petitioner Elumalai son of Kannappa Naikker, aged about 38 years, who is confined at Central Prison, Chennai and set aside the same and direct the respondents to produce the detenu before this court and set him at liberty.

For Petitioner : Mr.V.Parthiban
For Respondents: Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, by name Elumalai, who is detained as a ''Bootlegger" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 27.07.2006, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner; by drawing our attention to the remand order, dated 17.07.2006, passed by the learned Judicial Magistrate, Madurantakam, wherein the accused/detenu complained that though he was caught on 14.07.2006 at 1.00 p.m, the police produced him before the Magistrate only on 17.07.2006 at 12.30p.m; would submit that while disposing of the representation dated 15.08.2006, the Government, without properly considering the nature of allegation in the background of the factual details placed, has erroneously concluded that the detenu has not made such complaint against the police at the time of remand, hence the impugned detention order is liable to be quashed. The said conclusion is factually incorrect as seen from the order dated 17.07.2006 of learned Judicial Magistrate, Madurantakam. As rightly pointed out by the learned counsel for the petitioner, the Government have not properly considered all the relevant records when the remand order of the learned Judicial Magistrate, Madurantakam, dated 17.07.2006, refers to about the complaint of the detenu that though he was caught on 14.07.2006 at 1.00 p.m, he was produced before the learned Magistrate only on 17.07.2006 at 12.30 p.m. Inasmuch as the reply of the Government refers that the detenu has not made any complaint, it is patent that the above said relevant aspect has been omitted to be noticed by the Government resulting in an erroneous conclusion. Hence, we are satisfied that the Government have not properly considered all the materials placed before it and mechanically disposed of the representation, dated 15.08.2006, which vitiates the detention order passed by the detaining authority. On this ground, we quash the impugned order of detention.

4. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

raa

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Secretary to Government, State of Tamil Nadu,
Prohibition and Excise Department, Fort St. George,
Chennai-600 009.

2.The District Magistrate and District Collector,
Kancheepuram District, Kancheepuram.

3.The Superintendent, Central Prison, Chennai.
(In duplicate for communication to detenu)

4.The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5.The Public Prosecutor, High Court, Madras.

+ one cc to Mr.V.Parthiban, Advocate Sr.No.48298.

PV (CO)
RSM/30.10.2006

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